

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

JAMES DUFOE,

Plaintiff,

v.

PACCAR, INC. d/b/a PETERBILT MOTORS
COMPANY,

Defendant.

Case No.: 20-CV-_____

Pierce County Case No. 20-CV-188

NOTICE OF REMOVAL

TO: THE JUDGES OF THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

The Notice of Removal of the defendant, PACCAR Inc ("PACCAR"), and respectfully shows as follows:

1. On December 16, 2020, an action was commenced against PACCAR Inc in the Circuit Court for the State of Wisconsin, in and for the County of Pierce, entitled *James Dufoe v. PACCAR, Inc.*, Case No. 20-CV-188, by the filing of the Summons and Complaint with the Clerk of Courts for Pierce County, a copy of which is attached as **Exhibit A**.

2. Upon information and belief, the Summons and Complaint was served upon PACCAR on or about December 21, 2020. Responsive pleadings were served by efilng on January 8, 2021, a copy of which is attached as **Exhibit B**. No further proceedings have been held in this matter.

3. This action is a civil action over which this court has original jurisdiction under the provisions of 28 U.S.C. § 1441. This court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(a) because the dispute is between citizens of different states and the matter in controversy

allegedly exceeds the sum or value of seventy-five thousand dollars (\$75,000), exclusive of interests and costs, as more fully appears from the plaintiff's Complaint. Consequently, sufficient grounds exist for removal of the action to this court from the Circuit Court of Pierce County.

4. Pursuant to 28 U.S.C. § 1446(b), removal of this action is timely as it is filed within thirty days of service upon the defendant, PACCAR.

5. Venue properly lies in the Western District of Wisconsin since plaintiff's claims arise out of a motor vehicle purchase contract that was allegedly entered in Dane County, Wisconsin, and the plaintiff initially commenced this action in the Circuit Court for Pierce County.

THIS COURT HAS DIVERSITY JURISDICTION OVER THIS ACTION

Diversity of Citizenship

6. Upon information and belief, the plaintiff, James Dufoe, was at the time this action was commenced, and still is, a citizen of the State of Wisconsin, with his domicile located at 928 Pine Ridge Terrace, River Falls, WI 54022.

7. The defendant, PACCAR Inc, was at the time this action was commenced, and still is, incorporated under the laws of the State of Delaware, with a principal place of business in Bellevue, Washington.

Amount in Controversy

8. Plaintiff's Complaint alleges that he entered into a contract for the purchase and sale of a truck for the purchase price of \$178,999.00. (Plaintiff's Complaint, ¶3, Exh. A). The allegations in the Complaint seek a refund of the above purchase amount. The ad damnum clause indicates:

WHEREFORE, the Plaintiff demands judgment against the defendant as follows:

- (a) From the defendant, Paccar, Inc., d/b/a Peterbilt Motors Company, all pecuniary losses incurred heretofore or hereafter

including: the full purchase price of said 2019 Peterbilt 389, plus the cost of the services fee, sales tax, finance charges, title, loan filing, processing fees, all amounts paid at the point of sale, all collateral costs and all other amounts paid after sale for improvements/accessories, as applicable, as all these terms are defined and intended in Wis. Stat. §218.0171 in the alternative, for a money judgment in favor of the Plaintiff for all damages suffered because of the failure to repair and the amount of all pecuniary losses incurred heretofore or hereafter, as all these terms are defined in Wis. Stat. §218.0171:

- (b) For rescission of his purchase/Master Lease Agreement;
- (c) For prejudgment interest on all liquidated sums as provided by law;
- (d) For the Plaintiff's actual reasonable attorney fees;
- (e) For actual and statutory costs and disbursements incurred in this action; and
- (f) For such other relief as the Court deems just and equitable.

9. As reflected above, plaintiff's claim seeks recovery of the \$178,999.00 purchase price of the vehicle, plus other costs, as well as attorney's fees and costs.

10. While PACCAR denies that it is liable to the plaintiff for any of the alleged damages, plaintiff is seeking damages in excess of the jurisdictional limit of \$75,000.00.

NOTICE OF FILING

11. In accordance with 28 U.S.C. § 1446(d), written notice of the filing of this removal notice will be given to the plaintiff's counsel and filed with the Clerk of Courts for Pierce County, following the filing of this notice.

WHEREFORE, defendant, PACCAR Inc, requests that the above action now pending against it in the Circuit Court for the State of Wisconsin, in and for Pierce County, be removed to the United States District Court for the Western District of Wisconsin.

Dated this 14th day of January, 2021.

s/Jeffrey S. Fertl

Jeffrey S. Fertl

State Bar No. 1014806

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